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PP

v.

HAFISZAMRI AHMAD & ANOR

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COURT OF APPEAL, PUTRAJAYA
MOHD GHAZALI YUSOFF JCA
SURIYADI HALIM OMAR JCA
HASAN LAH JCA
[CRIMINAL APPEAL NO: P05-79-2000]

C

18 DECEMBER 2006

CRIMINAL LAW: *Dangerous drugs - Trafficking in cannabis - Jointly charged - End of prosecution case - Drugs in bedroom - Respondents hiding in ceiling of house - Evidence of other occupants in house - Effect*

D

- Whether drugs not in physical control of respondents - Whether not in exclusive possession of respondents - Whether no prima facie proved - Dangerous Drugs Act 1952, s. 39B(1)(a)

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The respondents were jointly charged with trafficking in 63,088 grams of cannabis under s. 39B(1)(a) of the Dangerous Drugs Act 1952. At the trial, the prosecution led evidence that the offensive drugs were found in a bedroom of the respondents' rented house, that at the time of the finding the respondents were hiding in the ceiling of the house, that a car belonging to a third party had been

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parked under the porch of the house, and that, among the other items taken by the police from the house were some clothing, including women and children attire. The facts further showed that the clothing were later handed over to PW3, the second respondent's wife (not staying at the house), who testified that an

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Indonesian woman later approached her, claimed ownership of the clothing and retrieved the same from her. Upon the evidence, the learned trial judge concluded that there was a reasonable possibility that there were other occupants in the house besides the two respondents, and that, under the circumstances, the respondents

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could not be said to have physical control and therefore exclusive possession of the drugs. The learned judge, hence, acquitted and discharged both respondents without calling for their defence. The Public Prosecutor appealed and the issues that arose were: (i) whether the learned judge erred in principle in applying the

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reasonable doubt standard of proof at the end of the prosecution's case notwithstanding that the offence here took

place on 9 July 1997; and (ii) whether the prosecution had made out a *prima facie* case that the drugs in question were in the joint possession of the two respondents at the material time.

Held (dismissing the appeal)
Per Hasan Lah JCA delivering the judgment of the court:

(1) We have no reason to disagree with the decision of the learned trial judge on the evidence of PW3 that the police had given her the said clothing or that an Indonesian woman had come and retrieved the same from her. Further, PW3's evidence was consistent with the evidence of other witnesses for the prosecution. The investigating officer had stated that he took possession of all the items found in the house including the clothes from the wardrobe and handed over all the clothes to PW3. There was also the evidence of PW11 that he saw a Proton Putra car parked under the porch of the house. These evidence lent credence to what was said by PW3 regarding the Indonesian woman. (para 17)

(2) The conduct of the respondents in hiding on the ceiling of the house when the police raided the house was consistent with their having known the presence of the drugs in the room. However, such conduct cannot give rise to an inference that the drugs were under their physical custody or control *(Abdullah Zawawi bin Yusoff v. PP)*. (para 18)

(3) Due cognizance ought to be given to the fact that the two respondents were jointly charged for the offence and that it was the view of the learned trial judge that other person or persons may also be occupants of the house. As was expressed in *R v. Abbott* (cited with approval by the Supreme Court in *Abdullah Zawawi bin Yusoff v. PP*) "if two people are jointly indicted for the commission of a crime and the evidence does not point to one rather than the other, and there is no evidence that they were acting in concert, the jury ought to return a verdict of not guilty against both because the prosecution have not proved the case". (para 19)

(4) The learned trial judge has undertaken a maximum evaluation of the evidence adduced by the prosecution when making his finding of facts that the two respondents did not have exclusive possession of the drugs. In spite of the fact that the learned trial judge has applied the wrong standard of proof, we are satisfied that he would have come to the same conclusion had he used the correct standard of proof at the end of the prosecution case based on the evidence before him. The learned trial judge has not erred in his analysis of the evidence and the application of the relevant principles of law thereto. (para 20)

Bahasa Malaysia *translation of headnotes*

Responden-responden telah dituduh bersama-sama mengedar 63,088 gram cannabis di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952. Di perbicaraan, pendakwaan mengemukakan keterangan bahawa dadah terlarang tersebut dijumpai dalam sebuah bilik tidur di rumah sewa responden-responden, bahawa sewaktu penemuan kedua-dua responden sedang bersembunyi di siling rumah tersebut, bahawa sebuah kereta milik pihak ketiga telah diletakkan di porch rumah tersebut, dan bahawa, antara barang-barang yang diambil oleh polis dari rumah tersebut adalah beberapa helai pakaian, termasuk pakaian perempuan dan kanak-kanak. Fakta seterusnya menunjukkan bahawa pakaian-pakaian ini kemudian diserahkan kepada SP3, isteri responden kedua (tidak tinggal di rumah tersebut), yang memberi keterangan bahawa seorang perempuan Indonesia kemudian datang menemui beliau, mengaku sebagai pemilik pakaian dan seterusnya mengambil pakaian tersebut dari beliau. Atas keterangan yang ada, yang arif hakim bicara merumuskan bahawa terdapat kemungkinan munasabah bahawa, selain dari kedua-dua responden, orang atau orang-orang lain juga mungkin turut menghuni rumah tersebut, dan bahawa, dalam halkeadaan itu, responden-responden tidak boleh dikatakan sebagai mempunyai kawalan fizikal dan kerana itu milikan ekslusif terhadap dadah. Yang arif hakim, dengan itu, telah melepas dan membebaskan responden-responden tanpa memanggil mereka untuk membela diri. Pendakwa Raya merayu dan isu-isu yang berbangkit adalah: (i) sama ada yang arif hakim khilaf pada prinsipnya apabila menggunapakai standard pembuktian keraguan munasabah walaupun kesalahan di sini berlaku pada 9 Julai 1997;

dan (ii) sama ada pendakwaan telah membuktikan kes *prima facie* bahawa dadah berada dalam milikan bersama responden pada waktu material.

Diputuskan (menolak rayuan)
Oleh Hasan Lah HMR menyampaikan penghakiman mahkamah:

(1) Kami tiada alasan untuk tidak bersetuju dengan keputusan yang arif hakim bicara mengenai keterangan SP3 bahawa pihak polis telah memberi pakaian yang berkenaan kepadanya atau bahawa seorang wanita Indonesia telah menemuinya dan mengambil pakaian tersebut darinya. Lagipun, keterangan SP3 adalah konsisten dengan keterangan saksi-saksi lain pendakwaan. Pegawai penyiasat telah menyatakan bahawa beliau telah mengambil kesemua barang-barang yang ada di rumah termasuk pakaian di dalam almari dan telah menyerahkan pakaian tersebut kepada SP3. Di samping itu, terdapat juga keterangan SP11 bahawa beliau melihat sebuah kereta Proton Putra diletak di bawah porch rumah. Semua ini menyokong apa yang dikatakan SP3 mengenai wanita Indonesia itu.

(2) Kelakuan responden-responden dalam bersembunyi di siling rumah apabila polis menyerbu rumah adalah konsisten dengan mereka mengetahui tentang kewujudan dadah di dalam bilik. Bagaimanapun, kelakuan sedemikian tidak boleh membangkitkan inferens bahawa dadah tersebut berada dalam kawalan atau jagaan fizikal mereka *(Abdullah Zawawi bin Yusoff v. PP)*.

(3) Perlu diakui bahawa kedua-dua responden dituduh melakukan kesalahan secara bersama dan bahawa yang arif hakim bicara berpandangan bahawa orang atau orang-orang lain juga mungkin menduduki rumah tersebut. Seperti yang dikatakan oleh *R v. Abbott* (dipersetujui Mahkamah Agong dalam *Abdullah Zawawi bin Yusoff v. PP*) "jika dua orang dituduh melakukan suatu kesalahan secara bersama dan keterangan tidak menuding kepada mana-mana satu di antara mereka, dan tiada juga keterangan bahawa mereka bertindak secara bersama, maka juri harus membuat keputusan tidak bersalah atas kedua-dua mereka kerana pendakwaan telah gagal membuktikan kesnya".

(4) Yang arif hakim bicara telah melaksanakan penilaian maksima terhadap keterangan yang dikemukakan oleh pendakwaan sewaktu mencapai dapatan fakta bahawa kedua-dua responden tidak mempunyai milikan ekslusif dadah. Walaupun yang arif hakim telah menggunapakai standard pembuktian yang salah, kami berpuas hati bahawa, atas keterangan yang ada di hadapannya di akhir kes pendakwaan, beliau akan mencapai keputusan yang sama seandainya pun beliau menggunakan standard pembuktian yang betul. Yang arif hakim bicara tidak khilaf dalam menganalisa keterangan serta dalam melaksanakan prinsip undang-undang yang relevan terhadap keterangan.

Case(s) referred to:
Abdullah Zawawi Yusoff v. PP [1993] 4 CLJ 1 SC ***(refd)***
Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
Leow Nghee Lim v. Reg [1956] 22 MLJ 28 ***(refd)***
PP v. Mohd Radzi Abu Bakar [2005] 1 CLJ 457 FC ***(refd)***
R v. Abbott [1995] 2 All ER 899 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 180(1)
Dangerous Drugs Act 1952, ss. 39B(1)(a), 39B(2)

For the appellant - Nurul Nur'aini Mohd Noor; DPP
For the respondent - Ranjit Singh Dhillon; M/s R Rajasingam & Co
K Kumaraendran; M/s Kumar & Co

Reported by WA Sharif

JUDGMENT

Hasan Lah JCA:

Introduction

[1] The two respondents were charged with trafficking in 63,088 grams of cannabis under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ("the Act") and punishable under s. 39B(2) of the Act. The charge read as follows:

> Bahawa kamu secara bersama pada 9 Julai 1997 jam lebih kurang 8.30 pagi, di No. 11A, Lorong Rupawan 6, Taman Rupawan, Kepala Batas, di dalam Daerah Seberang Perai Utara di dalam Negeri Pulau Pinang, telah mengedar dadah berbahaya, iaitu 63,088 gram cannabis, dan dengan itu kamu telah melakukan satu

kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 (Semakan 1980), dan boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

They were acquitted and discharged at the end of the prosecution case by the learned trial judge. This is an appeal by the Public Prosecutor against the decision. On 13 November 2006 we unanimously dismissed the appeal after hearing submissions from the deputy public prosecutor (DPP) and the counsel for the respondents.

Facts

[2] The salient facts adduced by the prosecution can be summarized as follows. On 9 July 1997 at about 8.30am, acting on information received DSP Idris bin Ab. Rafar (PW6) with a team of police personnel comprising 3 officers and 6 detectives raided a bungalow house at No. 11A, Lorong Rupawan 6, Taman Rupawan, Kepala Batas, Pulau Pinang ("the house"). According to PW6 at the scene he saw a motorvan and a motorcycle under the porch of the house. The main gate was locked. PW6 and his men entered the compound of the house by climbing over the fence. PW6 went to the front door of the house and opened the unlocked grille. PW6 knocked on the front door of the house and identified himself. Seeing there was no response from the occupier of the house PW6 asked Inspector Nordin bin Ibrahim (PW9) and Inspector Anderson to go to the back portion of the house. PW9 and Insp. Anderson entered the house by breaking open the wooden door of the rear portion of the house. Once inside the house they opened the front door to let the other members of the team, including PW6, into the house.

[3] According to PW6 there was nobody in the living room and the other rooms in the house were not locked except for the second room. Insp. Anderson then forced open the door of the second room. In the second room PW6 found 65 packages containing compressed dried leaves believed to be cannabis. In the living room PW6 confiscated several documents belonging to the two respondents. In the master bedroom PW6 saw a wardrobe, mattresses and clothes. The attached bathroom was wet and there were soap and toothbrush in the bathroom. In the living room there was a rack and a hi-fi set. The third and fourth rooms were empty. PW6 did not take possession of the keys to the house.

Under cross-examination PW6 said there was a toy racing car in the third room. In the dining room there was a rack for keeping clothes.

[4] PW9 stated in his evidence that while he was inside the house he heard somebody saying that there were people on the roof of the house. PW9 saw an opening in the ceiling located between the third and the fourth room. He instructed whoever on the ceiling to come down while pointing his pistol towards the direction of the opening. He then saw a ladder (exh. P27(18)) being lowered down through the opening. The first respondent came down through the opening. He was arrested by PW9.

[5] Chief Insp. Shanmugam s/o Perumal (PW10) was a member of the raiding team. In his evidence he stated that he went up to the ceiling to check and he found the second respondent squatting behind a water tank. He then arrested the second respondent.

[6] The house belong to Dr. Syed Azizi Wafa b. Syed Khalid Wafa (PW11) who was staying with his family in another house situated infront of the house. According to PW11 he rented out the house to the two respondents in the month of May or June 1997. The rent for June was paid by the first respondent and the rent for the second month (July) was paid by the second respondent. He gave a set of keys for the house to the first respondent.

Under cross-examination he said the house was occupied by the two respondents. He could see them at the house on the weekends. However he could not say how many people were staying in the house on weekdays. He never saw any woman or children in the house as he was away working during the weekdays. In June 1997 he saw a Proton Putra car and a motorcycle at the house. On re-examination he said the Proton Putra car was parked under the porch of the house and it was normally covered. He did not know who was the owner of the Proton Putra car. He also said there was a Proton Wira car parked by the roadside and the owner of that car could be his neighbour.

[7] PW4 (Hussain b. Mohd. Din) was the owner of the Suzuki motorcycle bearing registration number PBW 1725 which was parked under the porch of the house when the police raided the house. The second respondent was his son-in-law. He testified that the second respondent borrowed the motorcycle from him four days prior to the day of the incident. PW5 (Azizan bin Osman) was the registered owner of the Nissan Vanette motovan bearing registration number PBN 7444 which was also parked under the porch of the house on the day of the incident. The first respondent was his nephew. The motorvan was used by his brother, Ahmad bin Osman, who was the father of the first respondent.

[8] PW3, Siti Hajar bin Hussain, is the wife of the second respondent. They have five children from the marriage. According to PW3 from April to July 1997 the second respondent was staying in their house at No. 222 Blok A, Sg. Nibong, Bayan Lepas. The second respondent was working as an attendant at the Penang General Hospital. She said she and her children have never been to the house at No. 11A, Taman Rupawan.

Under cross-examination she said the investigating officer (PW15) has handed over to her a big barrel containing clothes.

[9] PW15, Chief Inspector Aziz bin Ahmad, was the investigating officer in this case. He went to the house on the same day at about 9.45am. At the house he met PW6 and was briefed by the latter about the case. PW15 drew a sketch plan of the house which was tendered in court as exh. P27A. He confirmed that the 65 packages of cannabis were found in the second room and there was no furniture inside the room. He found a bunch of keys hanging on the wall between the living room and the dining room. There were 8 keys and 7 of the keys could open the main door and the grille, the doors to the master bedroom and the other three rooms and the backdoor of the house. On 15 July 1997 he went to the house again and found another 8 keys in the living room. He also took possession of several clothes from the master bedroom and the living room. He went to the house again on 22 July 1997 and took possession of all the things found in the house.

[10] In his evidence the chemist, PW2, stated after chemical analysis, he found that the 65 packages containing the compressed dried leaves was cannabis as defined under s. 2 of the Act with a total weight of 63,088 grams.

The Standard Of Proof

[11] One of the grounds raised in this appeal by the learned DPP is that the learned trial judge has erred when he applied the beyond reasonable doubt standard of proof at the end of the prosecution's case. We agree with the learned DPP on this point. The offence took place on 9 July 1997. Section 180(1) of the Criminal Procedure Code was amended on 31 January 1997 whereby it was provided that the standard of proof on the prosecution at the close of its case is to make out a *prima facie* case. Notwithstanding that, we are mindful that it is settled law that at the end of the case for the prosecution the court is required to undertake a maximum evaluation of the evidence adduced by the prosecution when deciding whether or not to call on the accused to enter upon his defense (see *Balachandran v. PP* [2005] 1 CLJ 85).

Possession

[12] The main argument before us centred on the issue of possession. Has the prosecution made out a *prima facie* case at the end of its case that the drugs in question were in the joint possession of the two respondents on that day?

It was the contention of the learned DPP that the prosecution has done so in this case having regard to the evidence adduced, both direct and circumstantial, as a whole. She pointed out that the drugs in question were found in the second room which was locked and the key to this room was found hanging on the wall together with the other keys of the house. In addition to that both the respondents were found hiding on the ceiling of the house when the police raided the house.

[13] The learned trial was of the view that there is no direct evidence to show that the two respondents had knowledge of the existence of the drugs in the second bedroom. This is what he said in his judgment:

Pemilikan bermakna Tertuduh 1 atau Tertuduh 2 atau kedua-duanya tahu tentang adanya ganja di bilik No. 2 itu dan Tertuduh 1 atau Tertuduh 2 atau kedua-duanya boleh melupuskan ganja itu. Dalam kes ini tidak ada keterangan direct yang mereka tahu tentang ganja itu, keterangan yang ada ialah indirect evidence yang apabila dirangkumkan kesemuanya menunjukkan atau menjurus bahawa Tertuduh 1 & 2 tahu tentang ganja itu. Selain dari itu terdapat satu andaian undang-undang bahawa Tertuduh 1 & 2 dianggap menduduki premis itu kerana rumah itu adalah di bawah jagaan dan kawalan mereka.

[14] What constitutes possession? In *Pendakwa Raya v. Mohd Radzi bin Abu Bakar* [2006] 1 CLJ 457 the Federal Court has made the following observation on this point:

[13] Now, as to what the ingredients of possession in law has been established by a long line of cases. We find it unnecessary to discuss all of them here. Suffice that we refer to two of them. In *Toh Ah Loh & Mak Thim v. R* [1949] MLJ 54, Gordon-Smith Ag CJ when delivering judgment of the Singapore Court of Appeal explained the meaning in law of the word "possession" when appearing in the statute. His Lordship said:

> Possession, in order to incriminate a person, must have the following characteristics. The possessor must know the nature of the thing possessed, must have in him a power of disposal over the thing, and lastly must be conscious of his possession of the thing. If these factors are absent, his possession can raise no presumption of *mens rea*, without which (except by statute) possession cannot be criminal.

[14] The second is *Saad Ibrahim v. PP* [1968] 1 MLJ 158 where Yong J stressed the necessity of establishing the ingredient of knowledge on the part of an accused before he could be incriminated with possession. His Lordship there said:

> In my opinion mere possession is one thing and possession with *mens rea* is another. Possession which incriminates must have certain characteristics. The possessor must be aware of his possession, must know the nature of the thing possessed and must have the power of disposal over it. Without these characteristics possession raised no presumption of *mens rea*. Without *mens rea* possession cannot be criminal except in certain cases created by statute, which is not applicable in this case.

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> [15] We would also mention the learned judgment of Lim Beng Choon J in *PP v. Badrulsham b Baharom* [1988] 2 MLJ 585, which contains a full discussion of the several cases on the point.
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> [16] We accept these authorities as correctly stating the law. It follows that where the prosecution seek to prove trafficking by relying on s. 37(da), it must prove at the trial, all the ingredients of possession set out in the cases of *Toh Ah Loh* and *Mak Thim* and *Saad Ibrahim*.

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Possession therefore encompasses the element of physical control as well as an element of knowledge. In this case the learned trial judge has made a finding that the drugs in question might not be under the physical control of the two respondents. This is what he said in his judgment:

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> Saya dapati ada keterangan di dalam kes pendakwaan yang menunjukkan kemungkinan munasabah adanya orang lain menduduki rumah itu yang jika diterima kemungkinannya, ia boleh menafikan pemilikan eksklusif Tertuduh 1 & 2 tentang ganja itu.

Further down, he said:

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> Pegawai perampas ekshibit pula merampas 4 handphone bimbit yang kemudian disita. Pegawai penyiasat juga melihat cekak rambut/hair-band wanita di bilik air bilik No. 1. Keterangan saksi pandakwa ini menunjukkan kemungkinan munasabah tentang adanya orang lain menduduki rumah itu pada atau sebelum diserbu. Kehadiran perempuan Indonesia itu adalah jelas. Kehadiran pemandu/pemilik kereta Proton Putra dan kehadiran orang yang memakai pakaian kilang SONY tidak jelas tetapi ia mengundang keraguan yang munasabah. Pendakwa gagal menghakiskan keraguan ini dengan mendapatkan penjelasan lanjut dari saksi-saksi itu.

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[15] Before us, the learned DPP submitted that the learned trial judge has erred when he concluded that there was a reasonable possibility ("kemungkinan munasabah") from the prosecution's evidence that there were other occupants in the house besides the two respondents. In pursuing this issue, the learned DPP pointed the existence of other occupants was highly unlikely for the following reasons:

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(i) although a hair-band was found in the bathroom, no female clothing was found in the house;

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(ii) although a Proton Putra car was found parked under the porch of the house, no items were found in the house to show the existence of another occupant;

(iii) the second room where the drugs were found was only used as a store for drugs; the key to the second room was found hanging on the wall with other keys.

The learned DPP then pointed out the act of the two respondents in hiding in the ceiling of the house was not consistent with their innocence. She also urged this court to be cautious of PW3's evidence as she was an interested witness.

[16] Before we proceed to consider the learned DPP's argument we think it is not out of place to refer to the judgment of Taylor J in *Leow Nghee Lim v. Reg.* [1956] 22 MLJ 28. At p. 29 Taylor J said:

> In my view this argument takes insufficient account of the particular facts proved. An accused is entitled to the benefit of anything which can be elicited from the prosecution evidence; the onus is on the prosecution to adduce convincing evidence of the facts necessary to raise a presumption before the onus on any issue is shifted.

[17] We believe that the learned trial judge has applied the principles of law established in *Leow Nghee Lim*'s case cited above that the accused is entitled to the benefit of anything which can be elicited from the prosecution evidence. The learned trial judge accepted the evidence of PW3 on the existence of the Indonesian woman. This is what PW3 said in her evidence, under cross-examination:

> Insp. Aziz ada beri kepada saya selepas tangkapan, baju lelaki baju perempuan, baju kanak dan seluar, pakaian kilang SONY.
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> P27(12) Saya ditunjuk 2,3 helai baju ini. Saiz baju lelaki itu XL. Baju itu bukan baju suami saya. Aziz bagi saya baju dalam tong besar. Saya ambil bawa balik. Saya tak tahu baju siapa, baju perempuan dan kanak-kanak bukan saya punya. Saya tak tahu siapa punya.

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> Seorang perempuan Indonesia datang ambil baju perempuan dan kanak-kanak dari saya. Dia tidak pasti dia minta baju lelaki XL itu, dia cari sendiri dalam kotak. Saya marah. Saya tak pasti dia ambil baju XL itu.

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> Keterangan saya di Mahkamah benar. Saya ambil almari dan tilam dari B/P. Ia bukan kepunyaan suami saya. Perempuan Indonesia itu minta almari dan tilam. Saya tak bagi. Almari dan tilam terbakar dengan rumah saya di Blok A, Sg. Dua.

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We have no reason to disagree with the decision of the learned trial judge on the evidence of PW3 as he had the opportunity to see and hear PW3 giving evidence in court. Furthermore PW3's evidence was consistent with the evidence of other witnesses for the prosecution. The investigating officer has clearly stated in his evidence that he took possession of all the items found in the

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house including the clothes from the wardrobe. He was not sure whether there were female and children's clothes among the clothes taken. Later on he handed over all the clothes to PW3. There was also the evidence of PW11 that he saw a Proton Putra car parked under the porch of the house. These evidence

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lend credence to what was said by PW3 regarding the Indonesian woman.

[18] As regards the conduct of the two respondents whereby they were found hiding on the ceiling of the house when the police raided the house, that conduct was, as rightly held by the

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learned trial judge, consistent with their having known of the presence of the drugs in question in the second room. However such conduct considered together with the other evidence cannot, in our view, give rise to an inference that the drugs were under

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their physical custody or control. We agree with the observation made by Edgar Joseph Jr SCJ in *Abdullah Zawawi bin Yusoff v. PP* [1993] 4 CLJ 1 that an innocent man faced with the prospect of arrest on a capital charge might foolishly react in that way. At p. 6 of that case Edgar Joseph Jr SCJ said:

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> We now come to what does seem to us to be evidence of a potent kind against the appellant, namely his conduct in taking to his heels upon Insp Mat Yusoff announcing the discovery of the drugs in the box. This conduct of the appellant was consistent with his having known of the presence of the drugs in the box

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> before their discovery, indicating thereby a sense of guilt.

> On the other hand, it was conduct equally consistent with the appellant having been in a state of pure panic, bearing in mind that it was only after Insp Mat Yusoff announced the discovery of the drugs that the appellant took to his heels. An innocent man faced with the prospect of arrest on a capital charge might foolishly react in that way. It is true that the appellant himself denied running away but we agree with the judge that the appellant lied on this point, but this does not preclude us from drawing such inferences as may be justified from the evidence adduced by the prosecution. The Jamaican Privy Council case of *DPP v. Brooks*,[2] cited to us by the learned deputy public prosecutor, where the accused, who occupied the driver's seat of a stationary van which contained more than 1000 lbs of ganja, together with several others in the van, scrambled out and ran off, when police officers hurried towards the van, is, therefore, readily distinguishable

[19] In our deliberation we also took cognizance of the facts that the two respondents were jointly charged for the offence and the view of the learned trial judge that other person or persons may also be occupants of the house. In this regard we share the views expressed by Lord Goddard CJ in *R v. Abbott* which was cited with approval in *Abdullah Zawawi*'s case at p. 5:

> In this context, we are reminded of the case of *R v. Abbott*,[1] where Lord Goddard CJ delivering the judgment of the Court of Appeal of England, said this (at p 901 E-G):
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> > ... If two people are jointly indicted for the commission of a crime and the evidence does not point to one rather than the other, and there is no evidence that they were acting in concert, the jury ought to return a verdict of not guilty against both because the prosecution have not proved the case. If, in those circumstances, it were left to the defendants to get out of it if they could, that would put the onus on the defendants to prove themselves not guilty. Finemore J remembers a case in which two sisters were indicted for murder, and there was evidence that they had both been in the room at the time the murder of the boy was committed; but the prosecution could not show that sister A had committed the offence or that sister B had committed the offence. Very likely one or the other must have committed it, but there was no evidence which, and although it is unfortunate that a guilty party cannot be brought to justice, it is far more important that there should not be a miscarriage of justice and that the law should be maintained that the prosecution should prove the case ...

[20] We are satisfied that the learned trial judge has undertaken a maximum evaluation of the evidence adduced by the prosecution when making his finding of facts that the two respondents did not have exclusive possession of the drugs in question. In spite of the fact that the learned trial judge has applied the wrong standard of proof we are satisfied that he would have come to the same conclusion had he used the correct standard of proof at the end of the prosecution case based on the evidence before him. We are also satisfied that the learned trial judge has not erred in his analysis of the evidence and the application of the relevant principles of law thereto.

For these reasons we dismissed this appeal.